of security, everything that as between mortgagor and mortgagee, would pass as realty. In other words, that the possession of Kingsbury & Bennett was no notice to Kerr that rights in the buildings were claimed by them as tenants.

It is true, as a general rule, that the possession of a grantor or mortgagor is no notice to his grantee or mortgagee that he claims any rights in the premises as against the conveyance he gives: *Bloomer* v. *Henderson*, 8 Mich. 395; *Dawson* v. *Danbury Bank*, 15 Id. 487. But here Bennett, as well as Kingsbury, was in possession, and Bennett's rights could not be taken away by any act of Kingsbury's. As to Bennett, the buildings remained chattels, and it was the duty of Kerr to take notice of his rights. If he had done so and made the necessary inquiries, he would have ascertained that the buildings were personalty; for they could not be realty as to one interest and personalty as to another: *Adams* v. *Lee*, 31 Mich. 440.

We think the decree below was correct, and it must be affirmed with costs.

Supreme Court of Iowa.

REUBEN FARLING, ADM'R., ETC. *v.* A. J. CLEMMER ET AL.

A contract to pay a sum named in ten years, "with interest annually at seven per cent per annum until paid," means that the interest is due and payable each year.

ACTION to foreclose a mortgage: decree for plaintiff; defendants appeal.

The note secured by the mortgage was in the following words: — "Ten years after date I promise to pay to the order of Mary B. Farling, two thousand and one hundred dollars, value received, with interest annually at seven per cent. per annum until paid. Payable at Fort Plaine, Montgomery county, New York.

A. J. CLEMMER."

Monroe & Herrick, for appellants.

Were the words "with seven per cent. per annum" used alone, there could be no question as to the construction of the contract. No part of the interest would become due until the principal became due. The same would unquestionably be true were "annually at seven per cent." used alone. In *Adairs* v. *Wright*, 14 Iowa 22,

the language of the contract is "interest on the whole amount due at ten per cent. annually to be paid." The court below gave judgment for amount of payments with interest at ten per cent. and its decision was sustained.

In *Patterson* v. *McNeely*, 16 Ohio St. 348, the construction of the word "annually" was directly presented and decided, the court holding that it meant the same as "per annum," and in the same case, or cases there referred to, it was held that inserting the word "paid" between "interest" and "annually" was a material alteration, and avoided the contract.

How does the addition of the words "per annum" after "with interest annually at seven per cent." change the import of the note? Is not the legal effect precisely the same whether "per annum" is used or not?

"Per cent." under the decision of our Supreme Court means the same as "per cent. interest per annum." *Higly & Co.* v. *Newell*, 28 Iowa 519.

The counsel for plaintiff insists that a meaning must be given to every word and expression in the contract, that is, that tautology, in the construction of the contract, must not be permitted, and that if the court does not hold that the note in question requires the interest to be paid each year, "annually," or "per annum," will be surplusage. This is by no means a universal, nor in ordinary contracts, a general rule, unless it is apparent from the whole contract that the parties intended to give a different meaning to the words or expressions used. Especially is this the case where the words, when used separately, in the same connection have the same signification, as we have shown that "annually" and "per annum" have in the note in question, were they used alone; and more especially is this the case, when, to give the expressions used, a different construction would make a contract not favored by the law.

The court will never put such construction upon the language used as will make a contract not favored by the law, unless the language used unequivocally or expressly requires such construction. Presumptions will not be indulged in to raise such a contract. Interest is not payable before the principal on which it accrues, unless there is a *special* agreement to that effect, and such agreements are not favored in law: *French* v. *Kennedy*, 7 Barb. 452; *Fake* v. *Eddy*, 15 Wend. 76.

Such contracts are not implied in the absence of *express* stipula-

tions: *Aspinwall* v. *Blake*, 25 Iowa 320; 1 Am. Law Cas., 5th ed., 614.

If the agreement of the parties requires interest to be paid annually, then the interest when it becomes due draws interest, and it is in the nature of compound interest. Interest in the nature of compound interest, or interest upon interest, is not favored by the courts. There must be some provision which *unmistakably* requires it: *Foreman* v. *Foreman*, 17 How. 255; *Bander* v. *Bander*, 5 Id. 41; 16 Barb. 514; *Aspinwall* v. *Blake*, 25 Iowa 320. It is never allowable except in special cases: *Connecticut* v. *Jackson*, 1 Johns. Ch. 13.

At common law no interest was recoverable. Interest is a mere incident of the debt—not in fact such a part of the debt as will enable it to draw interest even after the principal sum is due: *Aspinwall* v. *Blake*, *supra*.

It is the experience of every lawyer, that parties in drawing contracts, frequently, and even generally, use expressions of the same signification for the sole purpose of rounding out sentences, or for the purpose, not of giving a different meaning, but of making that which has already been expressed more emphatic. The parties to the note in question evidently had both of these objects, especially the former, in view.

It is the duty of the court to so construe contracts as to carry out the intention of the parties. Where the language used is such as to raise a doubt, the court will give to it a construction that will make a contract favored by the law.

We have shown that "per cent." means in legal contemplation the same as "per cent. per annum." We have also shown that "annually at seven per cent." means the same as "seven per cent. per annum." Were the words "annually at seven per cent." used alone, the law would add by implication, after "per cent." the words "per annum." How then can the addition by the parties of words, which the law would imply, if not expressed, change the contract?

George Wattson, for appellee.

The opinion of the court was delivered by

BECK, J.—The only question presented in the case is whether, under the terms of the note, interest is payable annually. If the language be so construed, plaintiff is entitled to a decree for interest due, if not, there is nothing due upon the note, and plaintiff's peti-

tion ought to be dismissed. The language to be construed, is plain and scarcely capable of being misunderstood. The contract binds the defendant to pay ten years after date the principal named, "with interest annually at seven per cent. per annum until paid." The rate of interest is fixed by the words "seven per cent. per annum." The time of payment is prescribed by the words "interest annually." No other construction will give due force to all of the words used. The language construed in the cases cited by counsel is different from that used in the note before us. These cases, therefore, are not applicable to the question under consideration.

The judgment of the Circuit Court is affirmed.

RECENT ENGLISH DECISIONS.

High Court of Justice of England. Queen's Bench Division.

ANGUS ET AL. *v.* DALTON ET. AL.

In an action by the owners of a factory against the defendants for excavating the soil of an adjoining house in such a manner as to leave the foundation of part of the factory without sufficient lateral support, and thereby causing it to fall, it appeared that the two buildings had apparently been erected at the same time, and were estimated to be upwards of one hundred years old. Both had been occupied as dwelling-houses until about twenty-seven years before the accident, but the plaintiffs' predecessor had then converted his house into a coach factory, removing the internal walls, and erecting a stack of brickwork which both served as a chimney stack, and supported the girders which had to be put up to sustain the floors. The defendants, in taking down the adjoining house and in digging cellars which had not previously existed, left a support for the chimney stack which proved insufficient, and it fell, drawing after it the entire factory: *Held*, by the majority of the court (COCKBURN, C. J., and MELLOR, J.), that the defendants were entitled to judgment, for first, no grant of a right of lateral support for the factory by the adjacent land could be presumed from the enjoyment of such support by the plaintiff for twenty years, inasmuch as the owners of this land never had any power to oppose the conversion of the dwelling-house into a factory, and had no reasonable means of resisting or preventing the enjoyment by such factory of lateral support from the adjoining soil, and for the same reason such support was not an easement which had been enjoyed for twenty years within the Prescription Act (2 & 3 Wm. 4, c. 71, s. 2), as it could not be said to have been enjoyed by a person claiming right thereto and without interruption.

By LUSH, J., dissenting, that, after twenty years' enjoyment without physical obstruction of such support for the land with the factory upon it, it must be presumed that it had been enjoyed by virtue of some grant or agreement; that the mere absence of assent on the part of the adjoining owner was immaterial, and that the plaintiff was entitled to judgment.